



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: SEPTEMBER 26, 2022

IN THE MATTER OF:

Appeal Board No. 623435

PRESENT: GERALDINE A. REILLY, MEMBER

The Department of Labor issued the initial determinations disqualifying the claimant from receiving benefits, effective October 16, 2021, on the basis that the claimant voluntarily separated from employment without good cause; and in the alternative, disqualifying the claimant from receiving benefits, effective October 16, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to October 16, 2021, cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held telephone conference hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed May 4, 2022 (), the Administrative Law Judge granted the employer's application to reopen A.L.J. Case No. 022-03644 and overruled the initial

determinations.

The Commissioner of Labor appealed the Judge's decision to the Appeal Board, insofar as it overruled the initial determinations. The Board considered the arguments contained in the written statement on behalf of the Commissioner of Labor.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed fulltime as an eighth-grade teacher, with the employer herein, for approximately four years until October 1, 2021. The claimant worked in-person in a class room with students and in close proximity of other school personnel.

In August 2021, the NYC Commissioner of Health implemented a mandate requiring all Department of Education personnel become vaccinated against the COVID-19 virus by September 27, 2021. On September 1, 2021, September 12, 2021 and September 23, 2021, the claimant was notified by the employer that she was required to have one dose of the vaccine on or before September 27, 2021 or she would be removed from the payroll and placed on unpaid leave. The claimant applied for a religious exemption because she is a Christian and holds the belief that her body is the temple of God and her religion does not permit her to put chemicals and other types of human blood into her body. On September 24, 2021, the claimant applied for a COVID-19 vaccine religious exemption, which was denied.

On October 4, 2021, the claimant again applied for a COVID-19 vaccine religious exemption which was denied on October 8, 2021. The denial letter provided in part, "Per the Order of the Commissioner of Health, unvaccinated employees cannot work in a Department of Education (DOE) building or other site with contact with DOE students, employees, or families without posing a direct threat to health and safety. We cannot offer another worksite as an accommodation as that would impose an undue hardship." The claimant was separated from employment because she chose not to be vaccinated.

OPINION: The credible evidence establishes that the claimant's employment ended on October 1, 2021 because she refused to comply with the COVID-19 vaccine mandate, a condition of continued employment. There is no dispute that the claimant was aware of this requirement and its applicability to her as a teacher, or that she was further aware that she could not continue her employment if she did not comply. It is further undisputed that the employer discharged the claimant because she chose not to get the vaccine and that if she had been vaccinated as required, she could have continued in her employment.

However, because the claimant was aware of the vaccine mandate and that she could be separated from employment if she chose not to comply, we find that she provoked her own discharge. A provoked discharge occurs when a claimant voluntarily violates a legitimate known obligation, leaving the employer no

choice but to discharge her. A provoked discharge is considered a voluntary leaving of employment without good cause for unemployment insurance purposes and subjects a claimant to a disqualification from receiving benefits (see, *Matter of DeGrego*, 39 NY2d 180 [3d Dept.1976]).

In this matter, the obligation in question was compliance with the employer's vaccine requirement. It is significant that this requirement was established for the purpose of complying with the New York Commissioner of Health's mandate that all public employees of the City of New York, including New York City Department of Education personnel, be vaccinated against COVID-19 during the worldwide pandemic. The Courts have long held that New York State has the authority to regulate public health, including mandating vaccination to curb the spread of disease (see *Matter of Garcia v. New York City Dept. of Health & Mental Hygiene*, 31 NY3d 601 [2018], which upheld mandated annual influenza vaccinations for children attending childcare programs in New York City; *Matter of C.F. v. New York City Dept of Health & Mental Hygiene*, 191 AD3d 52 [2d Dept 2020], holding that a municipal agency had the authority to require immunizations of adults in an area where there was an outbreak of measles if authorized by law; and *Matter of New York City Mun.*

Labor Comm. v. City of New York, 73 Misc.3d 621 [Sup. Ct. N.Y. Cnty. 2021], where the Court declined to grant a temporary restraining order of the implementation of the New York City Department of Education's

COVID-19 vaccine mandate for its employees, noting that there was no dispute that the Department of Health and Mental Hygiene had the authority to issue the mandate and that the Court "...cannot and will not substitute [others'] judgment for that of New York City's public health experts," citing *New York State Inspection, Sec. & Law Enforcement Empls., Dist. Council 82 v. Cuomo*, 64 NY2d 233, 237-40 [1984]). Because of the severity of the ongoing COVID-19 crisis and healthcare providers' need to protect the health of their employees, the mandate that all Department of Education personnel be vaccinated against COVID-19 was justified by a compelling governmental interest. We therefore find that the employer's requirement that the claimant be vaccinated was a legitimate obligation and that the employer had no choice but to end the claimant's employment when she refused to meet it.

We now turn to the claimant's contention that her refusal to vaccinate was based on religious concerns for which she sought, and was denied, an exemption. We note that the Supreme Court of the United States has held that

"... an individual's religious beliefs [do not] excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate" (see *Employment Div. v. Smith*, 494 US 872, 879 [1990]). The Court determined that provided a law is neutral and not aimed at a specific religion, is generally applicable, and pertains to an area of law the government has the ability to regulate, it cannot be preempted by a religious practice. In the matter now before us, there is no allegation that the City of New York cannot regulate the Department of Education, that the law is not generally applicable to those working in public schools, or that it targeted a specific religion. Moreover, the United States Supreme Court has denied requests to block the vaccine mandate for New York City teachers (See *Keil v. City of New York*, No. 21A398, 595 U.S. ___, March 7, 2022; *Maniscalco, v. NYC Dept of Education*, No. 21-854, 596 U.S. ___, April 18, 2022).

Under these circumstances, we find that the claimant's personal beliefs do not outweigh the employer's interest in protecting the health and safety of its employees and students. The claimant therefore has not substantiated that she had good cause for ending continuing employment. We accordingly conclude that she was properly denied benefits. In light of the foregoing, the issue of misconduct is academic.

DECISION: The decision of the Administrative Law Judge, insofar as appealed from, is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective October 16, 2021, on the basis that the claimant voluntarily separated from employment without good cause, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

GERALDINE A. REILLY, MEMBER